

NEWS AND UPDATES – 12 February 2010

UPDATES

Excise hike in Budget to set off stimulus exit

Excise duties are likely to be raised in the forthcoming Budget by between 2 and 4 percentage points. Top sources in the Government have indicated that it is necessary to start increasing the rates now to get closer to the Goods and Services Tax rate when it is introduced, perhaps in a year. The likely Central GST rate is around 14 per cent. But the current excise rates are down to between 4 per cent and 10 per cent. The average rate is 8 per cent. "It would be too high a gap to bridge at one-go when GST comes," says a noted Government economist.

Top industry sources said: "We have more-or-less given up. But we are still trying to persuade the Government not to raise excise duties now. The producers will pass on the increase and that will only add to inflation."

However, inflation in manufactured products has been low, around 2 per cent on an average in the last six months (excluding sugar and other agri-products) compared to inflation in food products which has been ranging between 17 and 20 per cent. This gives the Government some elbow room to raise excise duty rates.

The Government slashed excise duty rates steeply during December 2008-March 2009 as part of its stimulus package to keep growth up after the global financial system collapsed in September 2008. Excise rates since December 2008 had been progressively cut from 16, 12 and 8 per cent to 10, 8 and 4 per cent depending on the product in question. Service tax was also reduced from 12 to 10 per cent.

The Government is considering a phased increase in indirect tax rates, and not a one-shot withdrawal.

Hospital reimbursements by TPAs' may be taxed

The forthcoming Budget may have provisions binding on the third party administrators (TPAs), the entities that network between insurers and hospitals to facilitate cashless treatment for policyholders, to deduct tax at source (TDS) before making payments to hospitals.

The rationale for the Finance Ministry to make it mandatory for TPAs to pay TDS before reimbursing that to hospitals is on account of a slew of cases filed by TPAs against the Income-tax (I.T.) Department. Here, the Department took a stand that TDS was payable by TPAs.

The money reimbursed annually to hospitals - for cashless services to policyholders - is estimated to be around Rs. 4,000 crore. Of this, 60 per cent is facilitated by TPAs, who make the payment out-of-float funds that are parked with them by non-life insurance companies. In return for their services, TPAs receive a commission from insurance companies of about 5 per cent on the health insurance premium.

The I.T. Department wants TPAs to deduct 10 per cent tax at source before making payments to hospitals. A Karnataka High Court verdict last year, in the case of Medi Assist, had favoured the I.T. Department's stand, following which a group of TPAs moved the High Courts in Mumbai and Delhi, which at present are hearing these cases. The Karnataka High Court had observed that since it involved TPA, the authority that makes payments to hospitals, it was, therefore, obligated to deduct TDS. The court had also observed that the critical factor in deciding this issue was the fact that the agreement relating to paying the hospitals was between TPA and them. The I.T. Department in Mumbai had raised a tax demand of Rs. 117 crore last year on a host of TPAs that operated out of the city. The Department raised the demand after conducting a survey on TPAs in the city. Here, it was revealed that none of them had deducted TDS, while making payment to hospitals.

This demand was raised under section 194J of the Income-tax Act. The rate of tax stipulated under this section is 10 per cent, if the payment is a fee for professional services or a fee for technical services or royalty.

High Court to decide on taxing expenditure on dividends

The Bombay High Court has recently admitted a writ petition that challenges an Income-tax Rule allowing the taxation of expenditure incurred on earning tax-free income like dividends and long-term capital gains. The writ petition was filed by a Mumbai-based exporter, along with Indian Exporters' Grievance Forum, a body under the Federation of Indian Export Organisations (FIEO). The final hearing of the matter is slated for February 15.

The specific rule challenged in the court, according to the petitioners, stipulates a stringent structure for taxing expenditure related to earning income that is exempt from taxation. Rule 8D authorises an Assessing Officer to use a formula for computing expenditure incurred on earning the tax-free income if he is not satisfied with the declaration of the taxpayer. Section 14A provides for taxing the expenditure related to earning the income that is exempt from taxation.

The petitioner stated that at times the rule leads to situations in which a disproportionately huge expenditure incurred on earning a small income was brought into the tax net. In the

process, the benefit derived by the taxpayer by earning income which is exempt from taxation is substantially reduced and even leads to double taxation.

Elaborating its stand, the petitioner said when it had earned tax exempt dividend from surplus - not borrowed funds - and which did not form part of the total income, the Assessing Officer could not consider the value of those investments on which no tax-exempt dividend was earned. For instance, the Assessing Officer could not consider as expenditure the interest that the company paid on loans taken for purposes other than earning tax-free dividend.

The petitioners forum representative stated in the writ petition that rule 8D is against the basic principle of taxation which allows levy of tax calculated as gross income minus expenditure. This specific rule is tantamount to double taxation, the petitioner contended.



R G D & Co.

CASE LAW

NONE at this moment



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